IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 912 OF 1989

The State of Maharashtra
(At the instance of Special
Land Acquisition Officer,
No.15, Pune.) ...Appellant

V/s

1. Smt. Anandibai Vasantrao Lonkar,
Sole Trustee of Onkareshwar Mahadeo
Devasthan, residing at 1286/A,
Shivajinagar, Pune - 5.

2. Pune Municipal Corporation,
Shivajinagar, Pune - 5. ...Respondents

Mr. K.K. Tated, AGP for the appellant.

None for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 19th August, 2005.

ORAL JUDGMENT: (Per V.M. KANADE, J.)

1. Heard the learned Assistant Government Pleader appearing on behalf of the State. None appears for the respondents.

2. The appellant - State of Maharashtra being aggrieved by the judgment and decree passed by the Extra Joint District Judge, Pune in Land Acquisition Reference No.44 of 1981 has filed this First Appeal.

By the said judgment and decree dated 10/10/1988, the Extra Joint District Judge was pleased to enhance the compensation awarded by the Special Land Acquisition Officer from Rs 35.60 paise per sq. meter to Rs 47.35 paise per sq. meter.

3. Brief facts which are relevant for the purpose of deciding this appeal are as under:-

4. The acquisition proceedings were initiated by the Special Land Acquisition Officer in respect of an area of 13700 sq. meters which finally culminated in award being passed on 20/11/1979.

5. The only point which is canvassed before us in this First Appeal is that the District Court had erred in granting interest @ 12% as provided in section 23(1-A) of the Land Acquisition Act, 1894. It was submitted by the learned Assistant Government Pleader appearing on behalf of the State that section 23(1-A) was incorporated in Section 23 of the said Act by virtue of amending Act No.68 of 1984 which came into effect from 24/09/1984. It was submitted that, in the present case, the award was passed on 20/11/1979 and section 30(1) clause (b) of the amending Act provided that in cases where the award was made prior to

30/04/1982 and against which reference was pending in the Reference Court on 24/09/1984, such cases were not covered by section 23(1-A) of the said Act. In support of the said submission, the learned Counsel relied on the judgment of the Supreme Court reported in the case of K.S. Paripoornan Vs. State of Kerala and others reported in **(1994) 5 SCC 593.**

6. The learned Assistant Government Pleader has taken us through the judgment and order of the Reference Court which was delivered on 10/10/1988. He submitted that, at the relevant time, Reference Court relied on the Full Bench Judgment of the Bombay High Court in the case of Jaywant Vs. Government of Goa, Daman and Diu reported in **1987 Mh.L.J. 1564** and on the basis of the said judgment, awarded interest @ 12% as provided under section 23(1-A) of the said Act. He submitted that, at the relevant time, the issue had not been concluded by the Supreme Court.

7. In our view, the submissions made by the learned Assistant Government Pleader will have to be accepted. It is an admitted position that by virtue of amendment to section 23, section 23(1-A) was incorporated and inserted with effect from 24/09/1984. However, section 30(1) of the amending Act laid down the manner

in which the said provisions had to be applied in respect of the cases pending on/or after 30/04/1982. This issue is finally concluded by the Supreme Court in the case of K.S. Paripoornan (supra) in which the view taken by the three Hon'ble Judges viz. Venkatachaliah, C.J., Agrawal & Bharucha, JJ., after interpreting section 30(1)(b) of the said Act was that section 23(1-A) will not be applicable where the award is passed prior to 30/04/1982 and the cases pending before the Reference Court on 24/09/1984. In our view, ratio laid down by the Supreme Court is squarely applicable to the facts of the present case.

8. Accordingly, First Appeal is allowed only to the extent where the Reference Court has awarded interest as provided under section 23(1-A). The impugned judgment and decree to that extent is modified. No other submissions has been made by the learned Assistant Government Pleader appearing on behalf of the State.

9. First Appeal is allowed in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)